



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

four or five years, as the directors thereof may from time to time determine. In determining the amount of the surplus to be distributed there shall be reserved an amount not less than the aggregate net value of all the outstanding policies." In an action brought to enjoin the Commissioner of Insurance from cancelling plaintiff's license in the state it was *Held*, that the law was not violated by the issuance of policies providing for the distribution of dividends at periods of ten, fifteen and twenty years, and the relief asked for was granted. *Equitable Life Insurance Society of the United States v. Host* (1905), — Wis. —, 102 N. W. Rep. 579.

The holding turned on the question whether the word "may" in the statute should be regarded as mandatory or merely permissive. The ground taken by the court is that the purpose of the law was the protection of policy holders by safeguarding against insolvency by providing for the cumulation of a surplus. The defendant, on the other hand, insisted that the statute was mandatory and that under it plaintiff had no right to defer payment of the dividends for a longer period than five years. In a recent case in Illinois (cited in the opinion) where the statute was practically identical with that of Wisconsin the same conclusion was reached by the court as in the principal case. *Rothschild v. New York Life Insurance Co.*, 97 Ill. App. 547; and a similar holding in New York is that in the case of *Greef v. Equitable Life Assurance Society*, 160 N. Y. 19, 46 L. R. A. 288. While it is well settled that the word "may" will be construed to mean "shall" whenever the public or third persons have a claim that the power ought to be exercised, yet the rule of interpretation is not uniform but depends upon what in view of the circumstances appears to have been the true intent of the statute. SEDGWICK ON STATUTORY CONSTRUCTION, p. 375; *Supervisors v. United States*, 4 Wall. 446; *Malcolm v. Rogers*, 5 Cow. (N. Y.) 188, 15 Am. Dec. 464, note; *State of Maryland v. Knowles*, 90 Md. 646, 49 L. R. A. 695; *The King v. Barlow*, 2 Selk. 609; LEWIS' SUTHERLAND ON STATUTORY CONSTRUCTION, (2nd edition) Vol. II, § 640. Notwithstanding the Illinois and New York decisions mentioned it seems that the words of the statute might well be construed as mandatory, else why is five years the longest term mentioned? It is said in one or more of the cases that the provision allowing annual dividends may be regarded as a limitation for the protection of policy holders against declaring them at shorter intervals. Why should not the same manner of construction apply to the longest period mentioned, regarding it, too, as a limitation beyond which dividends shall not be deferred?

MARRIAGE—SECOND MARRIAGE WHILE IMPEDIMENT OF FORMER MARRIAGE EXISTS—EFFECT OF REMOVAL OF IMPEDIMENT.—Complainant believed her husband by a former marriage was dead, but in order to remove any impediment to her second marriage with defendant she instituted proceedings for divorce from her former husband at the suggestion of defendant. While these proceedings were pending and before a decree of divorce was rendered complainant and defendant were married. After the decree of divorce was rendered defendant assured complainant that she was his lawful wife and that another ceremony was unnecessary. Complainant relied upon this assurance and lived with defendant as his wife for twenty-three years. Defendant then

left her, and after she had commenced this action, under the statute, for support defendant discovered that complainant's former husband was still living and set up the defense that he was not the husband of complainant. *Held*, that the relation of husband and wife began as soon as the decree was rendered dissolving complainant's first marriage. *Chamberlain v. Chamberlain* (1905), — N. J. —, 59 Atl. Rep. 813.

So long as a prior marriage exists, a second marriage is not rendered valid by the fact that it was contracted in good faith and in the belief that the prior marriage had been dissolved by death. *Glass v. Glass*, 114 Mass. 563; *Pain v. Pain*, 37 Mo. App. 110; *Gall v. Gall*, 114 N. Y. 109; or that a divorce had been secured, *Wilson v. Allen*, 108 Ga. 275; *Brown v. Brown*, 142 Ill. 409; *Pratt v. Pratt*, 157 Mass. 503. Where one of the parties to a valid marriage, contracts a second marriage, a subsequent divorce dissolving the prior marriage will not render the second marriage valid. *Teter v. Teter*, 101 Ind. 129; *Harris v. Harris*, 85 Ky. 49. The decree operates from the day it is rendered and does not relate back. *Alt v. Banholzer*, 39 Minn. 511; *Cook v. Cook*, 144 Mass. 163. But where the parties have acted in ignorance of a nullifying impediment and intended in good faith to marry and have cohabited as husband and wife and have declared themselves to be such and have continued to do so after the removal of the impediment, it has been held in a number of jurisdictions that this amounts to a common law marriage from the time the parties were competent to marry. *Manning v. Spurck*, 109 Ill. 447; *Barker v. Valentine*, 125 Mich. 336; *Schuchart v. Schuchart*, 61 Kas. 597. But see contra, *Hunt's Appeal*, 86 Pa. St. 294. There is, however, no presumption of marriage when the parties are ignorant of the fact that the impediment has been removed. *Randlett v. Rice*, 141 Mass. 385; *O'Gara v. Eisenlohr*, 38 N. Y. 296; *Cartwright v. McGown*, 121 Ill. 389.

MASTER AND SERVANT—DEFECTIVE APPLIANCES USED BY MASTER BUT BELONGING TO ANOTHER—DUTY TO EMPLOYEES.—Plaintiff was a brakeman in the employ of the defendant railway company. While acting in that capacity he was injured because of certain defects in a freight car. The car was not the property of the defendant but was used by it in its business. Plaintiff brings this action for damages. *Held*, that he was entitled to recover. *Wood v. Rio Grande Western Ry. Co.* (1904), — Utah —, 79 Pac. Rep. 182.

The defense in this case was conducted on the theory that, inasmuch as this car was the property of another company, the only duty defendant owed to its employees was that of inspection and that no liability could be imposed upon the defendant because the negligence of the car inspector was the negligence of a fellow servant. *Mackin v. B. & A. Ry.*, 135 Mass. 201; *Baldwin v. C. R. I. & P. Ry. Co.*, 50 Iowa 680; *R. R. Co. v. Fitzpatrick*, 42 Ohio St. 318; *Dewey v. R. R. Co.*, 97 Mich. 329, 22 L. R. A. 292, 56 N. W. Rep. 756; *Ballou v. C. M. & St. P. Ry.*, 54 Wis. 257. By the clear weight of authority, however, it is held that the duty of the master to furnish safe appliances is of such a nature that it cannot be delegated. Under such decisions the fellow-servant rule would be inapplicable. It is the duty of the master to furnish safe cars, and this duty extends not only to those owned by the master but to all those actually used in the business. *Cowan v. C. M. & St. P. Ry. Co.*,